

DOMESTIC RELATIONS COMMITTEE

Judicial Education Center, Building 4
541 E. Van Buren, Phoenix, Arizona
Turquoise/ Silver Conference Rooms

Minutes
March 5, 2010

MEMBERS PRESENT:

Honorable Linda Gray
Theresa Barrett
Sidney Buckman
William Fabricius
Jack Gibson
Jeffery G. Hynes - *telephonic*
Honorable David Lujan

Patti O'Berry - *telephonic*
Laura Sabin Cabanillas
George Salaz
Donnalee Sarda
David Weinstock
Steve Wolfson
Brian Yee

MEMBERS ABSENT:

Honorable Edward Ableser
Honorable Andy Biggs
Honorable David T. Bradley
Daniel Cartagena
Honorable Steve Court
Honorable Sharon Douglas
Todd Franks
Grace Hawkins

Danette Hendry
David Horowitz
Honorable Leah Landrum Taylor
Ella Maley
Honorable Rebecca Rios
Ellen Seaborne
Russell Smolden
Honorable Thomas L. Wing

GUESTS:

Katy Proctor
Honorable Colleen McNally
Honorable Sylvia Allen
Barbara Guenther
Roger Thompson
Ana Jabkowski
Dave Hoover
George Garcia
Dennis Olson
Gina Kash

Patricia Madsen
Kendra Diegan
Elizabeth Houde
Michael Espinoza
Richard Franco
Brooks Gibson
Timothy T. Frank
Joi Davenport
Carey Snyder Hyatt
Dene Brown

STAFF:

Kathy Sekardi
Tama Reily
Ingrid Garvey

Administrative Office of the Courts
Administrative Office of the Courts
State House of Representatives

CALL TO ORDER

Without a quorum present, Senator Linda Gray, Co-Chair, called to order the March 5, 2010 meeting of the Domestic Relations Committee (DRC) at 10:06 a.m.

Senator Gray announced that this meeting was called to allow the committee to weigh in on some of the domestic law and child support related bills that are currently being considered at the legislature. She stated that the senate had expressed a desire for input from the DRC on some of these bills. Analysts from both the house and the senate are present today.

APPROVAL OF MINUTES

As a quorum was not present, the minutes of the October 23, 2009 DRC meeting were not presented for approval.

DOMESTIC RELATIONS LEGISLATIVE UPDATE

Ms. Katy Proctor, AOC legislative liaison, presented an update on domestic relations and child support related bills, with a focus on the following bills:

HB2650/SB1199 Divorce; waiting period

This bill has two major provisions. First, it would extend the waiting period for divorce from 60 to 180 days after service of the divorce petition. Second, it introduces changes to the educational programs and mandates that certain instructional areas/topics be included in the programs.

SB1314 Domestic relations

This bill would require that all court rulings regarding community property and debt or parental fitness include written explanation of the conclusions, analysis of each issue, and a detailed list of facts and laws supporting its decision. It would also prohibit sole custody orders when both parents are found fit, unless both parents agree otherwise.

SB1095 Access to child; notification

This bill adds the requirement that parents notify each other of the possibility that a convicted or known sexual offender may have access to their child or children.

DISCUSSION OF SB1095 Access to child; notification

There were some opposing views expressed by committee members regarding this bill. Some argued that this legislation is unnecessary as this type of information is already available to parents, which includes internet websites that provide details such as identifying daycare and schools in the sex offender's area. However, other members argued that the focus of this legislation is the 'personal acquaintance' type of offender - family friend, in-law, relative of a friend - consequently, the offender may be present in the parent's home for holidays, birthday parties, or other occasions, and could potentially have easy access to the child. Furthermore, Ms. Elizabeth Houde, Executive Director of the Arizona Sexual Assault Network, pointed out the usefulness of internet information on sex offenders is limited since most offenders do not commit these acts in their own local areas.

Members discussed whether it would be useful to define the term “access” so as to aid the interpretation of the bill; however, it was noted that numerous discussions and language changes have taken place over the course of many workgroup meetings, and the resulting language choices reflect thorough analysis on this point.

DISCUSSION OF HB2650/SB1199 DIVORCE; WAITING PERIOD

Judge Colleen McNally, Maricopa County Superior Court Presiding Family Court Judge, shared her concerns about some of the changes SB1199/HB2650 would bring about – particularly to the increased divorce waiting period. Judge Colleen McNally expressed great concern about the provision that increased the divorce waiting period to 180 days, especially in light of the extra burden of proof required to establish abuse for the victim of domestic violence. She also explained the steps taken by the courts to encourage reconciliation, including offering free counseling through conciliation services. She reported the court will order a 60-day conciliation stay (unless good cause can be shown, such as the presence of abuse), even in instances where only one of the parties is willing to try counseling. Judge McNally proposed an alternative to the bill’s waiting period that would allow the court to expand the conciliation stay up to 120 days at the request of the parties. She also suggested the DRC be allowed to review and consider this legislation prior to further legislative action.

Several members spoke of the potential negative impact a protracted, conflict-ridden situation can have on children. There was particular concern that in relationships where domestic violence is present, the extended time period could significantly increase the risk of violence toward the woman and/or children. Other concerns focused on the increased cost to the parties. While members discussed general support for the education piece of the bill, there was concern voiced regarding the increased cost of revamped educational programs, and that due to the state budget status, some counties would be unable to offer these services.

DISCUSSION OF SB1314 DOMESTIC RELATIONS

Senator Sylvia Allen, the primary sponsor of SB1314, discussed the premise that joint legal custody is in the best interest of the child. She emphasized this bill may not be necessary in many situations – only in cases where couples disagree and/or one parent wants to pursue sole custody and the other parent doesn’t object. She states that too often it is the rule rather than the exception that sole custody is awarded.

Judge McNally explained this bill is focused on *joint legal custody*, which entails decision-making about health and welfare issues versus physical custody, which is about sharing parenting time. She explained there is currently no presumption of joint custody being in the best interest of children and no burden of proof, so judges have maximum discretion to decide these issues. This amendment would place the burden of proof on the parent seeking sole custody in the best interest of the child. She noted that as a whole, the bill is a good idea, but there are many gaps and more time is needed for review. She recommended the DRC as a good venue for review and development of the bill.

Numerous DRC members voiced concerns regarding the bill's lack of clarity in language and terminology and argued that the DRC needs time to work on the bill prior to any ruling by the legislature. Dr. Weinstock stated that the notion of a 'default' joint custody is good, however, he maintained that parental 'fitness' is a loose concept and does not sufficiently address the conflicts that even 'fit' parents can have regarding parental decisions, especially when the relationship is contentious. DRC member, Steve Wolfson, added that the DRC Ad Hoc Custody Statute Workgroup has invested a lot of time studying the issues involved and should be allowed to complete their work. Mr. Wolfson also informed the committee that the State Bar Family Law Section is strongly opposed to the bill, noting its impact on A.R.S. § 25-403 and the unnecessary restriction on the court's discretion to consider all of the factors in a case.

Mr. Bill Fabricius added that the Ad Hoc Custody Statute Workgroup's research on the custody statute is incomplete and recommended that more time is needed in order to hear from various specialists in the field, such as custody evaluators, to complete their study. Representative David Lujan agreed that the group should proceed with further study and revisions and he suggested the bill be brought back to the legislature next year.

Senator Gray announced that the Ad Hoc Custody Statute Workgroup is scheduled to meet again on March 19th and encouraged interested parties to attend the meeting.

Numerous members of the public were present at the meeting and gave testimony of their own personal situations as evidence of the need for SB1314, including Mr. Timothy Frank, Mr. Richard Franco, Mr. Michael Espinoza, Mr. Dennis Olson, Mr. Dave Hoover, Mr. Roger Thompson, and Mr. Terry Decker. There were many examples provided to point to the perceived failure of the current system, for example the ease with which individuals can successfully 'game' the system, using unethical tactics and bad-faith claims to gain sole custody. There was much support expressed for the establishment of a statutory definition of *fit* or *unfit* parenting.

Other members of the public expressed opposition to SB1314, including Ms. Patricia Madsen, who noted that joint custody does not address the problems underlying the conflict between parents, and she contended without addressing such issues, joint custody is not in the best interest of the child. Ms. Dene Brown spoke and shared her personal experience to demonstrate the ease with which an *unfit* parent could successfully convince the court of his/her parental fitness.

ADJOURN/CALL TO THE PUBLIC

Public comments are included under the respective bills to which they refer.

Meeting adjourned at 12:45 p.m.